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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,803	07/21/2003	Rudolf Bertagnoli	P07878US00/MP	3480
881	7590	06/01/2006	EXAMINER	
STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			REIMERS, ANNETTE R	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/622,803

Applicant(s)

BERTAGNOLI, RUDOLF

Examiner

Annette R. Reimers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 19-35 is/are pending in the application.
- 4a) Of the above claim(s) 4, 13, 14, 19-21, 26-28, 31, 32 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-12, 22-25, 29, 30, 33 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

Applicant is reminded of the election with traverse of invention I, claims 1-14 and 19-21, Species I, frame, Figure 2, and Subspecies I, retaining structure, Figure 1, in the reply filed on August 18, 2005.

As previously stated in the last office action, elected frame, i.e. Species I, Figure 2, does not include three anchor screws securable to three adjacent vertebrae, the frame member having three arms, each having a tube engaging one of the anchor screws. The frame member having three arms is shown in Figure 11, which was not elected by applicant. In addition, the elected retaining structure, i.e. Subspecies 1, figure 1, does not include a retaining structure that is a non-threaded securing structure, a resilient cap, or a bayonet-type joint. These features are shown in the retaining structure of figure 10, which was not elected by applicant. Furthermore, it is noted from the reply filed on August 18, 2005 that applicant does not believe, and neither does examiner, that claim 4 reads on the elected species. As such, claim 28 is being withdrawn, since claim 28 is structurally similar to claim 4.

Claims 4, 13-14, 19-21, 26-28, 31-32 and 35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.

The requirement is still deemed proper and is therefore made FINAL.

### ***Drawings***

The drawings are objected to because number 25 represents duplicate parts (see figures 1 and 8). It appears that the hollow tube should be number 23, not 25 (see figure 2). Correction is required.

### ***Specification***

The specification is objected to because number 25 represents duplicate parts (see paragraphs 0031 and 0035). It appears that the hollow tube should be number 23, not 25 (see paragraph 0030). Correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

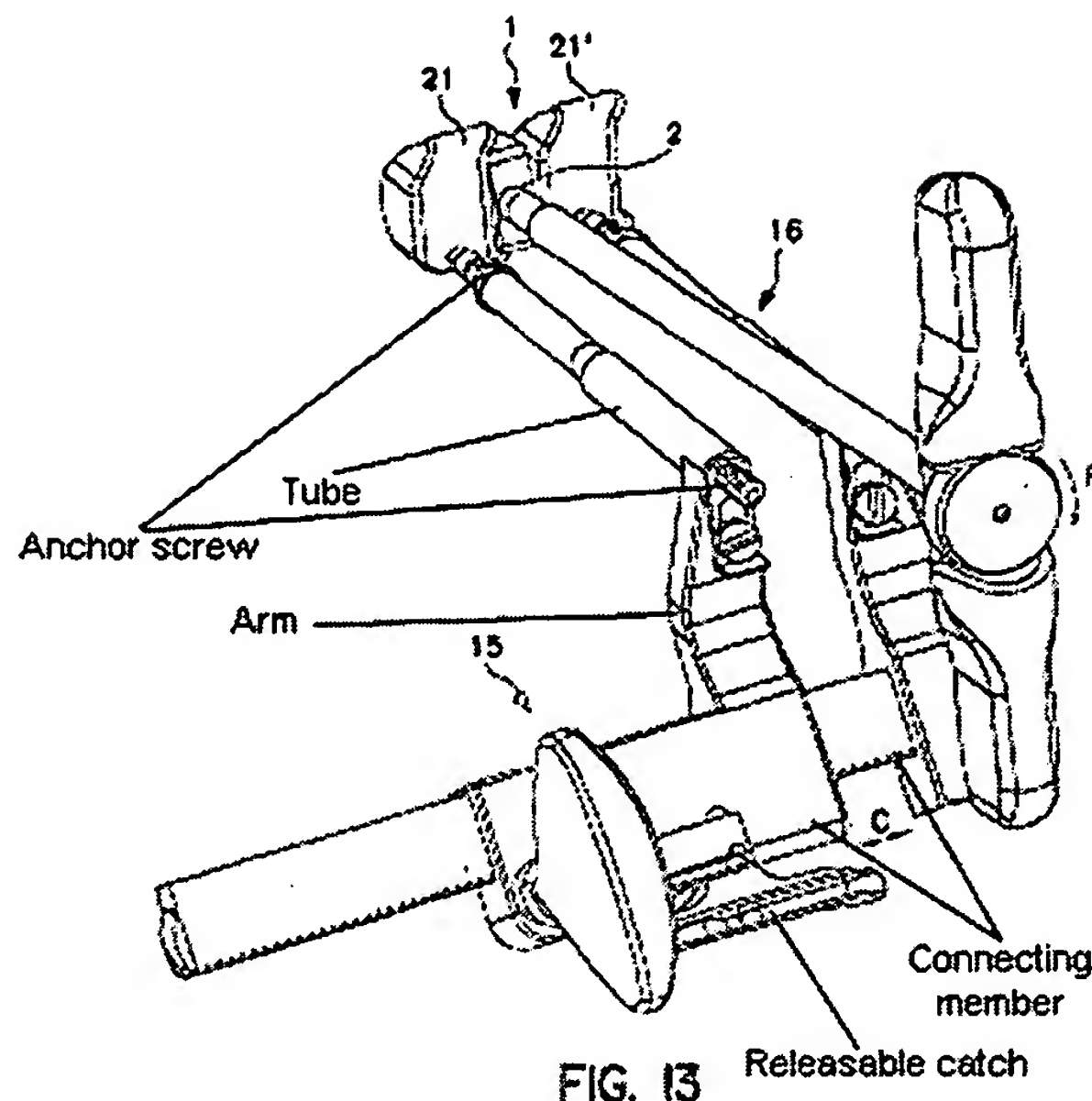
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-12, 22-25, 29-30 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Bolger et al. (U.S. Patent Number 6,770,096) in view of Martin Benlloch et al. (U.S. Patent Number 6,676,661).

Bolger et al. disclose an instrument for spreading at least two adjacent vertebrae and/or retaining at least two adjacent vertebrae in a spaced apart condition, a frame member comprising at least two arms each arm having a tube, a connecting member, connecting the arms for movement of the arms toward and away from each other and a plurality of anchor screws (see figures 10- 12 and figure 13 below).

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The connecting member comprises a connecting bar having two telescopic members, one arm connected to each of the telescopic members, such that telescopic movement of one of the telescopic members relative to the other causes the arms to move toward and away from each other (see figures 10-12 and figure 13 below). The inner of the two telescopic members being a toothed rod and the outer of the two telescopic members having a toothed wheel fixed thereto which engages the toothed rod for moving the two telescopic members relative to each other (see figures 10-12 and figure 13 below). A releasable catch is mounted on the outer of the telescopic members and engaging the teeth on the inner of the telescopic members for permitting free movement of the two telescopic members relative to each other in one direction but stopping movement of the two telescopic members relative to each other in the other direction (see figures 10-12 and figure 13 below).



Bolger et al. disclose the claimed invention except for a retaining structure for securing each of the anchor screws to its respective tube, wherein the retaining structure engages the rear end of the anchor screw and securely tightens it against the rear end of the tube, and wherein the retaining structure comprises a threaded nut, which threadedly engages the rear end of the anchor screw. Martin Benlloch et al. disclose an anchor screw, 3, with a threaded nut, 9, and teach the use of the threaded nut with the anchor screw in order to immobilize the screw in terms of rotation (see figure 1 and column 2, lines 7-18). It would have been obvious to one skilled in the art at the time the invention was made to construct the distraction device of Bolger et al. with a retaining structure for securing each of the anchor screws to its respective tube, wherein the retaining structure engages the rear end of the anchor screw and securely

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tightens it against the rear end of the tube, and wherein the retaining structure comprises a threaded nut, which threadedly engages the rear end of the anchor screw, in view of Martin Benlloch et al., in order to immobilize the screw in terms of rotation.

Moreover, it is well known in the art that threaded nuts are used as retaining structures for screws.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-14 and 19-35 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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SUPERVISORY PATENT EXAMINER